



The Governor's Family Violence Council

## In-Service Curriculum for Law Enforcement

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**Document:** Lesson Plan

**Title:** 2009 Legislative Changes Concerning Protective Orders and Firearms

**Date:** September 2009

**Length:** :50

**Document Aids:**

- PowerPoint slides (25)  
Side 1 is the title page and should be shown at the beginning of the training session.

**Accompanying Documents:**

- Law Enforcement Instructional Guide – 2009 Update:  
*Failure to Surrender Firearms – Temporary and Final Protective Orders*
- Examination and Examination Answer Key

**Handouts:**

- Law Enforcement Instructional Guide – 2009 Update:  
*Failure to Surrender Firearms – Temporary and Final Protective Orders*

**Outline:**

- I. Introduction (:02)
- II. Changes in the Law (:15)
- III. Procedures and Issues (:20)
- IV. Considerations about Enforcing the Surrender Provision (:08)
- V. Examination (:05)

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## **I. Introduction.**

*(Show Slide FVC-2)*

### **Slide FVC-2**

#### **I.A. Changes in the Law.**

The 2009 legislature passed 6 new bills related to protective orders. Two involved firearms, two duration; one the use of reasonable and necessary force to return a child to the custodial parent; and one notification upon service. Five will go into effect on October 1, 2009. One, involving notification upon service, will go into effect on January 1, 2010, contingent on receipt of federal funding.

#### **I.B. Guidelines and Training.**

These new laws will require law enforcement agencies, especially those that serve protective orders, to develop new procedures. The Family Violence Council (FVC), working with the Maryland Association of Domestic Violence Officers, the Attorney General's Office, the court, and other agencies, established an ad hoc "Firearm Surrender Task Force" to develop guidelines and forms, based on similar guidelines developed in 2004. Additionally, the task force has supplemented the guidelines with regional training sessions about the changes and an MPCTC-certified in-service training course to allow agencies to train their own officers.

#### **I.C. Purpose of the Training and Materials.**

The purpose of the regional training sessions, the in-service training, and the guidelines is to help agencies and officers understand the changes in order to implement procedures and to enforce the new laws.

## **II. Changes in the Law.**

### **II.A. Final Protective Orders and Surrender of Firearms.**

*(Show Slide FVC-3)*

#### **Slide FVC-3**

#### **II.A.1. Citation.**

FL, §4-506 (E) “The final protective order shall order the respondent to surrender to law enforcement authorities any firearm in the respondent’s possession, and to refrain from possession of any firearm, for the duration of the protective order.”

#### **II.A.2. Before October 1, 2009.**

The surrender provision applied only in Final Protective Orders where a judge, using his/her discretion, had ordered the respondent to surrender his/her firearms.

#### **II.A.3. Effective October 1, 2009.**

- a. All respondents subject to a Final Protective Order are required to (1) surrender all firearms in their possession to a law enforcement agency and (2) refrain from possessing all firearms.
- b. The judge has no discretion; he/she is required to order the surrender of all firearms. The surrender provision automatically applies to ALL Final Protective Orders. In fact, the box ordering surrender is pre-checked.
- c. The prohibition on possession of firearms is an addition to the statute to clarify that the respondent shall not be in possession of any firearms as long as the protective order is in effect.

#### **II.A.4. Summary of Change.**

The judge is now REQUIRED to order surrender of all firearms in all Final Protective Orders and the respondent shall not possess any firearm.

*(II. Changes in the Law, continued)***II.B. Temporary Protective Orders and Surrender of Firearms.***(Show Slide FVC-4)***Slide FVC-4****II.B.1. Citation.**

FL, §4-505 (a) (2) (viii). Judges under certain circumstances may order a respondent to a Temporary Protective Order “to surrender to law enforcement authorities any firearm in the respondent’s possession, and to refrain from possession of any firearm, for the duration of the temporary protective order...”

**II.B.2. Before October 1, 2009.**

There is no provision in the law for the surrender of or a prohibition to possess firearms in the case of Temporary Protective Orders.

**II.B.3. Effective October 1, 2009.**

- a. In some cases of Temporary Protective Orders, respondents are required to (1) surrender all firearms in their possession to a law enforcement agency and (2) refrain from possessing all firearms.
- b. A judge may now order the surrender of all firearms, under certain circumstances, by a respondent to a Temporary Protective Order.
  - (1) Temporary Protective Orders, such an order by a judge is discretionary, not mandatory as it is for Final Protective Orders.
  - (2) The circumstances by which a judge may order the surrender of firearms in a Temporary Protective Order are if abuse consisted of:
    - (a) the use of or threat to use a firearm by the respondent against the petitioner; or
    - (b) serious bodily harm or threat to cause serious bodily harm to the petitioner by the respondent.

*(II. Changes in the Law, "TPOs and Surrender of Firearms," continued)*

- c. The prohibition on possession of firearms is an addition to the statute to clarify that the respondent shall not be in possession of any firearms as long as the Temporary Protective Order is in effect.

**II.B.4. Summary of Change.**

The surrender and refrain provisions now may extend to Temporary Protective Orders; they previously applied only to Final Protective Orders.

**II.C. Extended Duration of Temporary Protective Orders.**

*(Show Slide FVC-5)*

**Slide FVC-5**

**II.C.1. Citation.**

FL, §4-505 (c) (2). "The judge may extend the duration of a temporary protective order as needed, but not to exceed 6 months, to effectuate service of the order where necessary to provide protection or for other good cause."

**II.C.2. Before October 1, 2009.**

The judge could extend the duration of a Temporary Protective Order from 7 days to up to 30 days in order to effectuate service.

**II.C.3. Effective October 1, 2009.**

The judge may now extend the duration of a Temporary Protective Order to effectuate service up to 6 months.

**II.A.4. Summary of Change.**

The extended duration of a Temporary Protective Order goes from up to 30 days to up to 6 months.

*(II. Changes in the Law, continued)***II.D. Extended Duration of Some Final Protective Orders.***(Show Slide FVC-6)***Slide FVC-6****II.D.1. Citation.**

FL, §4-506 (b) (2) (iii). “that the final protective order shall be effective for the period stated in the order, not to exceed 1 year, or under the circumstances described in subsection (H) (2), of this section, 2 years...”

**II.D.2. Before October 1, 2009.**

A Final Protective Order may be effective for up to one year, with a provision to extend it up to 6 additional months.

**II.D.3. Effective October 1, 2009.**

- a. The existing duration of 1 year and extension of up to 6 months remain unchanged.
- b. However, under certain circumstances, a judge shall issue a Final Protective Order for up to 2 years, if:
  - (1) The court issues a Final Protective Order for an act of abuse committed within 1 year after the date that a prior Final Protective Order issued against the same respondent on behalf of the same petitioner expires, and
  - (2) The prior order was issued for at least 6 months.

**II.A.4. Summary of Change.**

Some Final Protective Orders may be effective for up to 2 years.

*(II. Changes in the Law, continued)*

**II.E. Return of Children to the Custodial Parent.**

*(Show Slide FVC-7)*

**Slide FVC-7**

**II.E.1. Citations.**

FL, §4-504.1 (D) and FL, §4-505 (a) (3).

**II.D.2. Before October 1, 2009.**

As part of a Final Protective Order, a judge could and still may order a law enforcement officer to use reasonable and necessary force to the custodial parent. This provision applied only to Final Protective Orders.

**II.D.3. Effective October 1, 2009.**

The current “reasonable and necessary force” provision now extends to both Interim and Temporary Protective Orders, in addition to Final Protective Orders.

- a. Since Interim Protective Orders are included, this means that commissioners may also order the return of a child to the custodial parent.
- b. Officers are encouraged to read 84 Opinions of the Attorney General 105 (1999) concerning the use of reasonable and necessary force. This opinion is attached to the guidelines.

**II.A.4. Summary of Change.**

An order for a law enforcement officer to use reasonable and necessary force to return a child to the custodial parent applies to all types of protective orders, not just Final Protective Orders.

*(II. Changes in the Law, continued)*

**II.F. Notification of Service of Protective Orders.**

*(Show Slide FVC-8)*

**Slide FVC-8**

**II.F.1. Special Note.**

The below provisions concerning the notification of service would not go into effect until January 1, 2010. However, the provision is contingent on Maryland's receipt of federal funding in order to take effect. Agencies will be notified if the provision will go into effect on January 1, 2010.

**II.F.2. Citations.**

FL, §4-504.1 (f) (3), FL, §4-505 (b) (1) (II), and FL, §4-504 (D).

**II.F.3. Before January 1, 2010.**

There is no provision in the law to notify a petitioner of service of any type of protective order.

**II.F.4. Effective January 1, 2010 (if notified).**

A law enforcement officer shall, within two hours after service of an Interim or Temporary Protective Order on the respondent, electronically notify the Department of Public Safety and Correctional Services (DPSCS) of service. DPSCS shall notify a petitioner, who so requests, of service of an Interim or Temporary Protective Order within one hour after a law enforcement officer electronically notifies DPSCS of service, and of service of a Final Protective Order within one hour after knowledge of service of the order on the respondent

**II.F.5. Summary of Change.**

A law enforcement officer would be required to electronically notify DPSCS of service of an Interim or Temporary Protective Order within 2 hours after service is accomplished.

### III. Procedures and Issues.

#### III.A. Definition and Aspects of Firearms Related to Protective Orders.

(Show Slide **FVC-9**)

**Slide FVC-9**

**III.A.1.** A “firearm” is defined as a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or the frame or receiver of such a weapon and includes a starter gun (PS, §5-101 (h) (1 & 2)). The definition includes long guns, such as rifles and shotguns.

**III.A.2.** Whenever a firearm is ordered to be surrendered as part of the conditions of Temporary or Final Protective Orders, there are several aspects that have no exceptions while these orders are in effect:

- a. A respondent must surrender **ALL** firearms. There are no exceptions for unregulated firearms.
- b. A respondent shall not possess **ANY** firearm. Once again, there are no exceptions for unregulated firearms.
- c. There are **no exceptions** to the surrender and possession provisions. They apply to anyone who is a respondent. Therefore, there are **no exceptions for law enforcement officers** (or retired law enforcement officers) who are respondents. They are required to surrender and not be in possession of all firearms, including issued service weapons, while they are a respondent to a Temporary Protective Order that so orders or to a Final Protective Order (which automatically orders).

*(III. Procedures and Issues, continued)*

**III.B. Temporary Protective Orders (*firearms involved*).**

**III.B.1. Applicability of Firearms to Temporary Protective Orders**  
*(Show Slide FVC-10)*

**Slide FVC-10**

- a. If box #7 on the Temporary Protective Order is checked, the respondent may NOT legally possess any firearms. The respondent is restricted by FL, §4-505 (a) (2) (viii) that directs the respondent to surrender any firearm he/she possesses and to refrain from possessing any firearm.
- b. If box #7 on the Temporary Protective Order is not checked, the respondent is not restricted. The respondent may be in possession of any firearm he/she is legally entitled to possess.

**III.B.1. Service Packet: Notice Letter.**  
*(Show Slide FVC-11)*

**Slide FVC-11**

- a. The service packet for all Temporary Protective Orders where box #7 is checked and all Final Protective Orders will contain a new item: a letter from the court to the respondent concerning the surrender and retaking of his/her firearms.

*(III. Procedures and Issues, "TPOs--Service Packet: Notice Letter," continued)*

- b. The guidelines contain the new letter from the court entitled "Temporary or Final Protective Order Notice: Illegal Firearms Possession." It describes to the respondent (1) the requirements of the law, (2) the process for surrendering the firearm (3) the process for retaking possession of the firearm, and (4) the circumstances that prohibit the respondent from retaking possession. The court will provide this letter to the respondent in the service packet. At the time of service or at the time of surrender of the firearm the law enforcement officer should refer the respondent to the contents of the letter and advise the respondent to follow the procedures outlined for retaking possession.

**III.B.2. Serving Temporary Protective Orders (*firearms involved*).**

*(Show Slides FVC-12 and FVC-13)*

**Slide FVC-12**

After serving the order and reading the surrender provision from box #7 of the Temporary Protective Order to the respondent:

- a. The serving officer should ask the respondent if he/she possesses any firearms.
- b. If the respondent says no, the officer should advise the respondent that:
  - (1) It is illegal to possess any firearm;
  - (2) Any firearms in his/her possession must be surrendered to a law enforcement officer immediately;
  - (3) Failure to surrender is a violation of the law; and
  - (4) The transfer of firearms to another person, with the Temporary Protective Order in effect, is a violation of the law.

*(III. Procedures and Issues, "TPOs--Serving TPOs," continued)*

**Slide FVC-13**

- c. If the serving officer is aware that MILES indicates the respondent has registered firearms, or that the petitioner claims the respondent has firearms, and investigation reveals that the respondent does possess firearms, an arrest warrant should be sought.
- d. If the respondent acknowledges the possession of firearms, the serving officer should seek their surrender immediately on the scene.
- e. If the officer has determined that there is probable cause to believe the respondent possesses firearms and is refusing to surrender them, the officer shall effect an on-scene arrest and, as part of the investigation, one of the avenues may be to obtain a search warrant for the firearms.

**III.B.3. Transportation of Firearms.**  
*(Show Slide FVC-14)*

**Slide FVC-14**

- a. FL, §4-506.1 (A) provides that a law enforcement officer shall "...transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect."
- b. To fulfill this requirement, if the respondent requests that the firearms be transported in a protective case and makes one available, the officer shall transport those firearms that fit in the case.
- c. The officer is not required to suggest the use of a protective case.

(III. **Procedures and Issues**, “TPOs—Transportation of Firearms,” continued)

- d. Other firearms that do not have a protective case provided by the respondent shall be transported safely and carefully.
- e. It is the agency’s responsibility to maintain the integrity of stored firearms.

**III.C. Final Protective Orders.**

**III.C.1. Agency Responsibility Upon Receipt of the Final Protective Order.**  
(Show Slide **FVC-15**)

**Slide FVC-15**

In the case of a Final Protective Order, the court will send a copy of the order, including the letter from the court, explaining firearm surrender and retake procedures, to the law enforcement agency that is responsible for service and that maintains the protective order file. At that point, agencies should adopt the following procedure to facilitate the surrender of firearms:

- a. Once the copy of the Final Protective Order is received by the law enforcement agency, the agency should:
  - (1) Contact the respondent to arrange for the surrender of his/her firearms;
  - (2) Although the respondent has already been served with the Final Protective Order, provide the respondent with a copy of the order to ensure that the respondent is aware that he/she must surrender firearms; and
  - (3) Annotate the “Remarks” field of MILES/NCIC with “firearms surrender ordered.”

*(III. Procedures and Issues, "FPOs—Agency Responsibility," continued)*

- b. If the respondent fails to comply with the arrangement and there is probable cause to believe that the respondent possesses firearms, the agency shall arrest the respondent or, if an arrest is not physically possible because the respondent is not present, should apply for an arrest warrant.

**III.C.2. Surrender of Firearms.**

*(Show Slide FVC-16)*

**Slide FVC-16**

Each agency that serves protective orders as a primary responsibility will establish its own policy and procedures for how firearms will be surrendered. The letter from the court explaining the firearm surrender and retake procedures accompanies the Final Protective Order service packet.

**III.D. Receipt of Firearms by Agencies.**

**III.D.1. Surrender of Firearms to an Agency.**

*(Show Slide FVC-17)*

**Slide FVC-17**

- a. Box #12 on the Final Protective Order form and box #7 on the Temporary Protective Order have a line on which the judge will enter the specific law enforcement agency to which the respondent shall surrender the firearms. This provision is not new to the Final Protective Order. The judge has a list of agencies in each county and Baltimore City which has the responsibility to serve protective orders.
- b. Generally, that is the sheriff's office, but it varies from jurisdiction to jurisdiction. Those agencies are designated as the agencies to which firearms will be surrendered.

(III. **Procedures and Issues**, “Receipt of Firearms by Agencies—Surrender of Firearms to an Agency,” continued)

- c. The judge will usually select from the agency or agencies in the jurisdiction in which the order will be served as to which agency the firearms should to be surrendered.
- d. The judge is not bound to the list; he/she may also select an agency that is not listed as the serving agency.
- e. Moreover, if the respondent turns the firearms in to an agency other than the designated agency, the receiving agency should not refer the respondent to the designated agency but should accept the firearms.

**III.D.2. Notification to the Court of Surrender of Firearms.**  
(Show Slides **FVC-18** and **FVC-19**)

**Slide FVC-18**

There is no centralized notification system; furthermore, the information is not in MILES. As a means to address this deficiency and to have a standardized procedure, the following procedures are recommended:

- a. When a respondent surrenders firearms, the agency will:
  - (1) Document in its protective order file that firearms have been surrendered, and
  - (2) Prepare, keep a copy of, and submit to the court a copy of the property inventory sheet or a form similar to the attached model entitled “Schedule of Firearms Surrendered or Seized—Final Protective Order,” as a means of recording and notifying the court of the surrender of firearms.

*(III. Procedures and Issues, "Receipt of Firearms by Agencies—Notification to Court of Surrender of Firearms," continued)*

**Slide FVC-19**

- b. If firearms are confiscated by or surrendered to an agency other than the one designated in the protective order:
  - (1) The receiving agency should take custody of those firearms and immediately notify the agency to whom the firearms were supposed to have been turned in that the firearms have been taken into custody.
  - (2) The receiving agency may take steps to transfer the firearms to the designated agency if an arrangement can be mutually agreed upon.
- c. With information from the original custody agency, the designated agency will carry out the steps in section a above.

**III.E. Retaking Possession of Firearms by the Owner.**

**III.E.1. Circumstances for Retaking Possession.**

*(Show Slide FVC-20)*

**Slide FVC-20**

If the respondent seeks to retake possession and is eligible to do so, he/she may retake possession of the firearms at the expiration of a Temporary or Final Protective Order, unless:

*(III. Procedures and Issues, “Retaking Possession of Firearms by Owner—Circumstances for Retaking Possession,” continued)*

- a. the respondent is ordered to surrender the firearms in a Final Protective Order,
- b. the Final Protective Order is extended, or
- c. the respondent is not otherwise legally entitled to own or possess the firearm.

**III.E.2. Notification To Retake Possession.**  
*(Show Slide FVC-21)*

**Slide FVC-21**

Except for the notification for retaking possession given to the respondent at the time of surrender, there is no specific requirement in the surrender provision to notify the respondent after a Temporary or Final Protective Order has expired. Agencies should follow their standard property procedures.

## IV. Considerations about Enforcing the Surrender Provision.

### IV.A. Reminder about Enforcement of the Protective Order Surrender Provision.

(Show Slide **FVC-22**)

#### Slide FVC-22

- IV.A.1.** FL, §4-509 (b) states that “An officer shall arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation” This means that **an officer is required to effect a custodial arrest**, whether or not the violation occurs in the officer’s presence or view, if the officer has probable cause to believe that an arrestable condition—in this case, the surrender and possession condition--of any type of protective order has been violated.
- IV.A.2.** **You have no discretion about whether or not to arrest a respondent if the surrender and possession condition is violated.** You must arrest, whether the condition is violated in your presence while you are on the scene and the respondent is present, or a violation is called to your attention as having occurred (for example - several days before) and you have probable cause to believe that the violation did occur as alleged, so long as the violation occurred while the order was in effect.
- IV.A.3.** **The firearm surrender provision applies only to Temporary Protective Orders under certain circumstances where a judge may order surrender, and to Final Protective Orders where the judge is required to order surrender.** Interim Protective Orders do not have a firearm surrender provision, and firearm possession, unless otherwise prohibited by law, is permitted. Accordingly, only judges have the authority to order the surrender of firearms, not commissioners.

*(IV. Considerations about Enforcing the Surrender Provision, continued)*

**IV.B. Scenarios.**

*(Show Slides FVC-23 and FVC 24)*

**Slide FVC-23**

- IV.B.1. If there is no probable cause to believe that the respondent possesses firearms or it becomes evident that the respondent does not possess firearms and the order requires surrender,** there is no probable cause to believe there is a violation and therefore arrest is not authorized. The court may be notified of the law enforcement agency's determination, but there is no requirement to modify the protective order. It is best that the surrender order remain in place in the event new information reveals that the respondent does possess firearms or comes in possession of firearms during the course of the protective order. The protective order can only be violated if there is probable cause to believe that the respondent has possession of firearms which he/she has failed to surrender.
- IV.B.2 If the victim claims the respondent has not turned in any firearms (or has kept some of them) and they are in the home and accessible to the victim,** a law enforcement officer could respond to the location with the petitioner and, if the petitioner has the legal authority to consent to a search of the location, seize the firearms. The officer shall then arrest the respondent or, if an arrest is not physically possible because the respondent is not present, the officer should apply for an arrest warrant.

*(IV. Considerations about Enforcing the Surrender Provision, "Scenarios," continued)*

**Slide FVC-24**

- IV.B.3. If the victim claims the respondent has not turned in any firearms (or has kept some of them) and they are in the home but NOT accessible to the victim, or they are in another location,** a law enforcement officer would have to determine whether the respondent had turned in any firearms and then conduct an investigation to determine whether there is probable cause to believe the respondent has not complied with the order. This investigation could include a search warrant for the home or other location if the statement of the petitioner is credible and/or there is other information that establishes probable cause. If it is determined that the respondent has not complied, the officer shall arrest the respondent or, if an arrest is not physically possible because the respondent is not present, the officer should apply for an arrest warrant.
- IV.B.4. If the respondent fails to surrender firearms:**
- a. and there is probable cause to believe the respondent possesses firearms, and a reasonable amount of time has passed that would have enabled a respondent to "immediately" surrender his/her firearms, a law enforcement officer shall arrest the respondent or, if an arrest is not physically possible because the respondent is not present, the officer should apply for an arrest warrant.
  - b. If there is probable cause to believe that the respondent possesses firearms in a particular location, such as the residence or another specified location, and the agency does not receive consent to retrieve the firearms, as part of its investigative procedure, the law enforcement agency may apply for a search warrant.

*(IV. Considerations about Enforcing the Surrender Provision, "Scenarios," continued)*

- c. It is not necessary to have firearms present in order to effect an arrest. However, as in other criminal cases, the prosecution must prove the charge beyond a reasonable doubt. While charges may be supported by a single witness' statement that the defendant failed to surrender a firearm in violation of the order, it will be helpful to have independent evidence of possession of the firearm. Corroboration of such testimony by other witnesses or evidence will be extremely helpful. Recovery of the firearm itself through the execution of search warrant or other permissible search will be helpful in securing a conviction.

**IV.C. Guide and Training Not a Substitute for Legal Advice.**  
(Show Slide **FVC-25**)

**Slide FVC-25**

The accompanying guide and this lesson plan and training are intended as a training tool and offers some procedural recommendations. It is not intended to substitute for the advice of legal counsel. Please use due care and consult state and local laws, legal advisor, and agency policy and procedure.